

MISSOURI COURT OF APPEALS WESTERN DISTRICT

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COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

TONY M. BOWMAN,

Appellant.

DOCKET NUMBER WD70366

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: March 23, 2010

Appeal from

The Circuit Court of Jackson County, Missouri
The Honorable Kathleen A. Forsyth, Judge

APPELLATE JUDGES

Division Three: James Edward Welsh, Presiding Judge, Mark D. Pfeiffer and Karen King Mitchell,
Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

STATE OF MISSOURI,)
)
 Respondent,)
 v.)
)
 TONY M. BOWMAN,)
)
 Appellant.)

WD70366

Jackson County

Before Division Three Judges: James Edward Welsh, Presiding Judge, Mark D. Pfeiffer and Karen King Mitchell, Judges

Tony M. Bowman appeals the trial court's judgment convicting him, after a jury trial, of one count of first-degree burglary in violation of section 569.160. On appeal, he presents two points in which he challenges the sufficiency of the evidence and the trial court's verdict director.

AFFIRMED.

Division Three holds:

Bowman broke into a duplex that was undergoing renovation. While Bowman was within the duplex, the owner entered and attempted to forestall the robbery by standing in the common hallway area and blocking the door. Bowman fled out the window. On appeal, Bowman argues that the owner was not present in the building, a necessary element of the crime, because Bowman was in a separate apartment and the owner was in the hallway. Bowman maintains that, because an apartment owner does not have control or an expectation of privacy in a common hallway area, such an area cannot be considered as part of the structure for the purposes of section 569.160.

We disagree and conclude that, based on case precedent from other states, similar Missouri cases, and the public policy behind section 569.160, secured common areas and hallways of a

multi-unit building that are not otherwise open to the public can be considered a part of an apartment unit for the purpose of section 569.160.

Bowman claims that the verdict director was flawed because it did not precisely identify the apartment he allegedly robbed. This claim of error is insufficient because, even if the director was flawed, it did not result in manifest injustice. Bowman conceded at trial that someone had committed first-degree burglary. His sole argument at trial was that he had been falsely identified. Because Bowman conceded that a robbery occurred and that the owner was on the premises, any error in the verdict director regarding which apartment was robbed would not have altered Bowman's conviction.

Opinion by: Mark D. Pfeiffer, Judge

March 23, 2010

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